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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/702,470      | 10/31/2000  | Paul J. Dow          | 478SC               | 1093             |

7590

11/20/2002

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EXAMINER

CHIESA, RICHARD L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1724

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/702,470

Applicant(s)

PAUL J. DOW

Examiner

RICHARD L. CHIESA

Group Art Unit

1724

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on April 5, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 13 is/are allowed.
- ☒ Claim(s) 1-12, and 14-24 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

1. Prosecution on the merits of this application is reopened on claims 1-12, and 14-24, considered unpatentable for the reasons indicated below.
2. Applicant is advised that the Notice of Allowance mailed April 22, 2002 is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-12 are confusing because there is apparently no proper antecedent basis for the expressions "the body" and "the cam" in line 15 of claim 1. It would appear that these phrases should be changed to --the carburetor body-- and --the cam body--, respectively.

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4. Claims 14-24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the invention as now claimed. Both claims 14 and 23 were amended on April 5, 2002 to recite that the throttle shaft or valve shaft is axially movable relative to the mixing passage and the carburetor body. There is apparently no support in the original disclosure, including the specification, claims, and drawings, for this claim limitation. See amended claim 14, lines 5-6, and newly added claim 23, lines 6-7.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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6. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Pattullo. Pattullo (note Figures 14-31) discloses the following:

A valve assembly comprising:

a carburetor body 50 with a mixing passage 70 and a pair of co-axial bores (see Figures 14 and 31) on opposite sides of the mixing passage 70 and extending transversely to the longitudinal axis of the mixing passage 70,

a polymeric valve shaft 56 (see col. 9, lines 23-35) extending transversely through the mixing passage and journaled for rotation in the bores, and having a slot 72 therethrough between its ends,

a valve head 62 received in the mixing passage, disposed in the slot 72 and carried by the shaft 56 for rotation in unison with the shaft so that rotation of the shaft changes the orientation of the valve head 62 relative to the mixing passage 70 to control fluid flow through the mixing passage 70, and

the length of the slot 72 through the shaft 56 being greater than the width of the portion of the valve head 62 disposed in the slot 72 of the shaft and greater than the width of the mixing passage at the location of the shaft 56 in the mixing passage 70.

In comparing the length of the slot 72 shown in Pattullo's Figure 23 with the diameter of the valve plate shown in Figure 18, it is clear that the slot length exceeds the valve plate diameter (i.e. valve head width) because Pattullo discloses in column 9, lines 4-22 that Figures 15-30 are drawn to

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engineering scale. Furthermore, the width of the mixing passage must closely match the valve plate diameter (i.e. the valve head width) in order for the passage to close effectively.

It is finally noted that claim 23 is not directed to a throttle valve or throttle valve shaft but rather only a valve assembly and valve shaft. Pattullo's valve assembly is directed to the choke valve and choke valve shaft. However, claim 23 is of course broad enough to encompass either a throttle valve/shaft or a choke valve/shaft.

*Allowable Subject Matter*

7. Claim 13 is allowed.

8. Claims 1-12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

9. Claims 14-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action.

10. Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard L. Chiesa whose telephone number is (703) 308-3791.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is (703) 308-0661.

Facsimile correspondence to Art Unit 1724 must be transmitted through (703) 305-7718. This number is for Art Unit 1724 correspondence only.

Richard L. Chiesa  
June 10, 2002

*Richard L. Chiesa*

**RICHARD L. CHIESA  
PRIMARY EXAMINER  
ART UNIT 1724**

*June 10, 2002*